

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

IN RE: CIRCUIT CITY STORES, INC.,	)	Case No. 08-35653-KRH
	)	Chapter 11 Proceeding
JOHN ROHRER CONTRACTING	)	
COMPANY, INC.	)	
Plaintiff,	)	
	)	
v.	)	Contested Matter No. _____
	)	
CIRCUIT CITY STORES, INC.,	)	
	)	
Defendant.	)	

**NOTICE OF AND MOTION FOR RELIEF FROM AUTOMATIC STAY**

John Rohrer Contracting Company, Inc. (“John Rohrer”) has filed papers with the Court to seek relief from the automatic stay (the “Motion”).

**Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the relief sought in this Motion, or if you want the Court to consider your views on the Motion, then on or before March 23, 2009, you must file a written response explaining your position with the Court at the following address:

William C. Redden, Clerk  
U.S. Bankruptcy Court  
Eastern District of Virginia  
Richmond Division  
701 E. Broad Street, Suite 4000  
Richmond, VA 23219

If you mail your request or response to the Court for filing, you should mail it early enough so the Court will receive it on or before the date stated above.

You must also mail a copy to:

William A. Gray, Esquire – VSB #46911  
C. Thomas Ebel, Esquire – VSB #18637  
Lisa Taylor Hudson, Esquire – VSB #45484  
Sands, Anderson, Marks & Miller, P.C.  
801 East Main Street, Suite 1800  
(Post Office Box 1998)  
Richmond, Virginia 23219 (23218-1998)  
(804) 648-1636 (Telephone)  
(804) 783-7291 (Facsimile)  
*Counsel for John Rohrer Contracting Company, Inc.*

William A. Gray, Esquire  
Sands Anderson Marks & Miller, P.C.  
801 East Main Street  
Post Office Box 1998  
Richmond, VA 23218-1998

You must attend Preliminary Hearing scheduled to be held on **March 30, 2009, at 10:00 a.m.**, in Courtroom 5000, United States Bankruptcy Court, U.S. Courthouse, 701 E. Broad Street, Richmond, Virginia.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting that relief.

**MOTION FOR RELIEF FROM AUTOMATIC STAY**

John Rohrer submits the following Motion for Relief from Automatic Stay, requesting the Court permit John Rohrer to pursue certain Litigation (as hereinafter defined) in state court. In support of this Motion, John Rohrer states the following:

1. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1334. This matter is a “core” proceeding as set forth under 28 U.S.C. § 157.
2. On November 10, 2008 (the “Petition Date”), the Debtors filed under Chapter 11 of Title 11 of the United States Code.
3. On or about March 4, 2009, Cleveland Construction, Inc. filed its Motion for Relief from the Automatic Stay (“Cleveland Construction’s Motion”) seeking permission to enforce its Mechanic’s Lien relating to property located at the Merriam Village Shopping Center in Merriam, Kansas [Docket No. 2417]. John Rohrer supports and joins in Cleveland Construction’s Motion.
4. On or about December 18, 2008, John Rohrer, a Kansas corporation whose principal place of business is in Kansas, filed a Mechanic’s Lien in the amount of \$44,948.39, in the Clerk’s Office for the District Court of Johnson County, Kansas (the “Mechanic’s Lien”).

5. The Mechanic's Lien was filed as a result of nonpayment of moneys owed by Cleveland Construction to John Rohrer as subcontractor in the construction of Circuit City Store #4220, Merriam Village Shopping Center, 6030 Eby Street, Merriam, Kansas (the "Property").

6. John Rohrer's Mechanic's Lien attaches to both, the real property, as well as Circuit City's leasehold interest. John Rohrer understands that Motion for Approval of Bidding and Auction Procedures [Docket No. 1946] (the "Motion for Approval") has been filed regarding the leasehold interest and the Motion for Approval was granted [Docket No. 2242]. This Motion seeks no relief regarding the leasehold interest.

7. In order to enforce its Mechanic's Lien against the real property, John Rohrer desires to join in the lawsuit to be filed by Cleveland Construction in the state of Kansas (the "Litigation").

8. Pursuant to Kansas state law, Circuit City is a necessary party to the above Litigation, as further explained in Cleveland Construction's Motion.

9. Through such Litigation, John Rohrer would simply seek the sale of the real property, which is not an asset of the Debtors' bankruptcy estate.

10. Upon the filing of this Bankruptcy, John Rohrer was stayed from pursuing such Litigation.

11. The interests of John Rohrer in the above-referenced Litigation are not adequately protected thereby constituting cause for granting relief from the automatic stay of 11 U.S.C. § 362(a).

12. Circuit City's leasehold interest is currently the subject of a Motion for Approval of Bidding and Auction procedures. Nothing contained herein shall be deemed a waiver in John

Rohrer's lien against the proceeds from any such sale and John Rohrer hereby expressly reserves its rights to any proceeds from the sale of Circuit City's leasehold interest at the Property.

13. John Rohrer requests that the ten-day period or stay under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure, during which the stay remains in effect be waived and any Order granting relief become effective immediately upon entry.

WHEREFORE, by reason of the forgoing and arguments at any haring, John Rohrer Contracting Company, Inc. respectfully requests that this Court enter an Order:

- a. Granting it immediate relief from the automatic stay of 11 U.S.C. § 362(a), to allow John Rohrer to pursue Litigation to enforce its Mechanic's Lien, including the sale of the Property, solely as set forth herein;
- b. Maintaining the automatic stay of 11 U.S.C. § 362(a) in full force and effect except as otherwise requested herein;
- c. Waiving the ten-day period or stay under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure, during which the stay remains in effect; or
- d. Otherwise granting it adequate protection, and that it has such other and further relief as the Court may deem appropriate.

**Respectfully submitted,**

**JOHN ROHRER CONTRACTING COMPANY,  
INC.**

By: /s/ William A. Gray  
William A. Gray, Esquire – VSB #46911  
C. Thomas Ebel, Esquire – VSB #18637  
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(804) 648-1636 (Telephone)  
(804) 783-7291 (Facsimile)

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Notice of and Motion for Relief from Automatic Stay was served by electronic means through the ECF system to all registered parties and was mailed by first class U.S. mail, postage prepaid, this 10th day of March, 2009, to the below service list:

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